

REMARKS

Claims 1-16, 18, and 19 are pending in the present application. Claim 17 was previously cancelled, and claim 20 has been cancelled herein. Claims 1, 4, 9, 12, and 18 have been amended herein. No new matter has been added. Applicants respectfully request reconsideration of the claims in view of the following remarks.

As an initial matter, Applicants note that the Office Action has still failed to address claim 19. As pointed out in the previous Amendment, claim 19 was added by a Preliminary Amendment dated May 30, 2006. Applicants respectfully request that any subsequent action address this claim. Applicants also respectfully point out that since this claim has yet to be addressed, a subsequent Office Action may not be made final.

Claims 1-16 and 18 have been rejected under 35 U.S.C. § 103(a) as assertedly being unpatentable over U.S. Patent No. 6,791,941 (hereinafter “Dziong”) in view of U.S. Patent Application Publication No. 2003/0086425 (hereinafter “Bearden”). Applicants respectfully traverse these rejections.

Applicants’ claim 1 recites, “measuring *end-to-end* forwarding quality in measurement nodes *located outside a network core*.” Initially, Applicants note that the Office Action has taken contradictory positions regarding the limitation “located outside the network core.” First, in response to Applicants’ arguments made in the previous amendment, the Office Action explicitly stated, “Applicant argues Dziong does not disclose . . . measurement nodes located outside the network core. ***Examiner agrees with the applicant.***” Office Action, page 9 (emphasis added). In contrast, the Office Action also took the contradictory position, albeit an incorrect position, that the core network is only the ATM 101-3 as illustrated in Figure 1 of Dziong, and that the other ATM switches are outside the core network. Applicants respectfully

submit that this later position is incorrect and is inconsistent with how the term “core network” is used and understood by one of ordinary skill in the art.

Nevertheless, Applicants respectfully submit that the Office Action impermissibly dissects Applicants’ claim 1. “[W]hen evaluating the scope of a claim, every limitation in the claim must be considered. USPTO personnel *may not dissect* a claimed invention into discrete elements and then evaluate the elements in isolation. Instead, the claim as a whole must be considered.” MPEP § 2106 (emphasis added). The following paragraphs discuss the limitations of claim 1 with reference to the claim as a whole, as well as the assertions contained in the Office Action.

Applicants’ claim 1 recites, “measuring end-to-end forwarding quality in measurement nodes located outside a network core.” Even assuming that ATM 101-1 is not part of the core network, ATM 101-1 does not measure end-to-end measurements. Rather, the ATM 101-1 only collects measurements related to *its own performance*, such as average cell rate and cell loss. These measurements are made by the specific ATM for its own performance only.

The Office Action acknowledged that Dziong fails to disclose measuring end-to-end measurements, but asserted that Bearden discloses measuring end-to-end measurements and that it would have been obvious to combine Dziong and Bearden. But even if Dziong and Bearden were to be combined, the combination fails to disclose the way the end-to-end measurements are made and how they are used. When read as a whole as required by the MPEP, Applicants’ claim 1 recites a method of not only measuring end-to-end forwarding quality, but also how to use those measurements. Simply showing a reference that discloses end-to-end measurements is not sufficient to render the claimed invention obvious. Applicants are not asserting that the Applicants have invented taking end-to-end measurements, but Applicants are asserting that the

Applicants have invented a new and novel way of measuring and using end-to-end measurements.

For example, Applicants' claim 1 also recites, "detecting forwarding quality violations in at least one path between the measurement nodes." The Office Action asserted that measurements discussed in Dziong at column 8, line 50 through column 9, line 45, and Figure 9, disclose this element. It should be noted, however, that the measurements disclosed in the referenced section of Dziong and the process illustrated in Figure 9 are *related to each specific switch*. That is, the measurements listed in Dziong are made by each switch and are related only to that switch and Dziong does not disclose "between the measurement nodes." In other words, the process disclosed is performed on a per switch basis, *as opposed to a per path between measurement nodes* as recited in Applicants' claim 1. Dziong assertedly discloses cell loss per switch, but does not disclose a forwarding quality violation based on the path between measurement nodes. It should also be noted that the measurement nodes are "outside the network core." As Dziong only discloses measuring its own performance, there is no mechanism in Dziong to make any sort of measurements "between measurement nodes" that are "outside the network core." Applicants discussed this difference and the benefits of using end-to-end measurements rather than the forwarding quality measurements of each individual switch in the patent application. *See, e.g., Summary, page 12.*

Applicants' claim 1 further recites, "selecting at least one potentially overloaded interface along the at least one path where forwarding quality violations were detected by combining knowledge about different end-to-end measurements performed in the data network with knowledge about network topology and knowledge about booking levels and forwarding capacity for interfaces along the at least one path." It should be noted that the selecting is based

on the end-to-end measurements, which are measured by measurement nodes located outside the core network. While the Office Action acknowledged that Dziong does not disclose end-to-end measurements, the Office Action asserted that Bearden discloses the end-to-end measurements. As stated above, however, simply showing a reference that discloses end-to-end measurements is not sufficient to render the claimed invention obvious. Applicants are not asserting that Applicants have invented taking end-to-end measurements, but Applicants are asserting that Applicants have invented a new and novel way of measuring and using end-to-end measurements. With reference to this claim element, the cited references fail to disclose selecting a path by combining the end-to-end measurements with network topology, booking levels, and forwarding capacity for the interfaces along the path related to the end-to-end measurement. Where in the cited references does it disclose using the end-to-end measurements in this manner?

As can be seen clearly from the above discussion, the cited references fail to disclose the unique combination of elements recited in Applicants' claim 1. It is also clear that the Office Action impermissibly dissected Applicants' claim by attempting to pull different individual pieces from various references without any consideration of the claim as a whole. In particular, the cited references fail to teach or suggest measuring end-to-end measurements in measurement nodes located outside the network core and then using those end-to-end measurements in the manner recited in Applicants' claim 1. Simply because a node assertedly outside the network core reports data about its own performance, does not render obvious to measure end-to-end measurement in nodes located outside the network core. Simply because end-to-end measurements are known, does not render obvious the specific method of using those end-to-end measurements as recited in Applicants' claim 1.

Accordingly, in view of the above remarks, Applicants respectfully submit that claim 1 is allowable over the cited references. Applicants' claim 9 recites similar limitations and is allowable over the cited references for at least similar reasons. Accordingly, Applicants respectfully request that the rejections to claims 1 and 9 be withdrawn. Claims 2-8, 10-16, 18, and 19 depend from and add further limitations to one of claims 1 and 9. It is respectfully submitted that these dependent claims are allowable by reason of depending from an allowable claim as well as for adding new limitations.

Applicants have made a diligent effort to place the claims in condition for allowance. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Roger C. Knapp, Applicants' Attorney, at 972-732-1001, so that such issues may be resolved as expeditiously as possible. The Commissioner is hereby authorized to charge any fees that are due, or credit any overpayment, to Deposit Account No. 50-1065.

Respectfully submitted,

December 1, 2009
Date

SLATER & MATSIL, L.L.P.
17950 Preston Rd., Suite 1000
Dallas, Texas 75252
Tel.: 972-732-1001
Fax: 972-732-9218

/Roger C. Knapp/
Roger C. Knapp
Attorney for Applicants
Reg. No. 46,836